

## CHAPTER 94E.

### PROVISIONS CONCERNING CERTAIN TOBACCO MANUFACTURERS

#### § 1. Definitions

As used in this chapter, the following words shall have the following meanings:-

"Adjusted for inflation", increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

"Affiliate", a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest or the equivalent thereof, of 10 per cent or more; and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

"Allocable share", allocable share as that term is defined in the Master Settlement Agreement.

"Cigarette", any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own", so-called, which is any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

"Master Settlement Agreement", the settlement agreement, and related documents, entered into on November 23, 1998 by the commonwealth and leading United States tobacco product manufacturers.

"Qualified escrow fund", an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with clause (b) of section 2.

"Released claims", released claims as that term is defined in the Master Settlement

Agreement.

"Releasing parties", releasing parties as that term is defined in the Master Settlement Agreement.

"Tobacco product manufacturer", an entity that directly, and not exclusively through any affiliate:

(a) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and if the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in clause (a) or (b).

The term "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within clauses (a) to (c), inclusive.

"Units sold", the number of individual cigarettes sold in the commonwealth by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary during the year in question, as measured by excise collected by the commonwealth on packs bearing the excise stamp of the commonwealth, or roll-your-own tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of state excise paid on the cigarettes of such tobacco product manufacturer for each year.

## § 2. Financial obligations of tobacco manufacturers selling cigarettes to consumers within commonwealth

Any tobacco product manufacturer selling cigarettes to consumers within the commonwealth, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall do one of the following:

(a) become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts as such amounts are adjusted for inflation:

- (i) 2000: \$.0104712 per unit sold;
- (ii) for each of 2001 and 2002: \$.0136125 per unit sold;
- (iii) for each of 2003 through 2006: \$.0167539 per unit sold;
- (iv) for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) a tobacco product manufacturer that places funds into escrow pursuant to subclause (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the commonwealth or any releasing party located or residing in the commonwealth. Funds shall be released from escrow under this subclause (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the commonwealth in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of said agreement after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer; or

(iii) to the extent not released from escrow under paragraphs (i) or (ii) of subclause (2) of clause (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with this section. The attorney general may bring a civil action on behalf of the commonwealth against any tobacco product manufacturer that fails to place into escrow the funds required under this section.

(4) Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this section, may impose

a civil penalty to be paid to the general fund of the commonwealth in an amount not to exceed 5 per cent of the amount improperly withheld from escrow per day of the violation, and in a total amount not to exceed 100 per cent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this section, may impose a civil penalty to be paid to the general fund of the commonwealth in an amount not to exceed 15 per cent of the amount improperly withheld from escrow per day of the violation, and in a total amount not to exceed 300 per cent of the original amount improperly withheld from escrow; and

(iii) in the case of a second, knowing violation, be prohibited from selling cigarettes to consumers within the commonwealth, whether directly or through a distributor, retailer or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.